

**United States Bankruptcy Court
Northern District of Illinois
Eastern Division**

Transmittal Sheet for Opinions

Will this opinion be published? No

Bankruptcy Caption: In re Francisco and Martha L. Mier

Bankruptcy No. 02 B 41012

Adversary Caption:

Adversary No.

Date of Issuance: July 27, 2005

Judge: Jack B. Schmetterer

Appearance of Counsel:

Attorney for Movant or Plaintiff: Joseph Wrobel, Ltd.

Attorney for Respondent or Defendant:

Trustee or Other Attorneys: Robert B. Katz; U.S. Trustee; Walinski & Trunkett; Sheriff of Cook
County Levy Department

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN THE MATTER OF:)	
)	
FRANCISCO and MARTHA L. MIER,)	CASE NO. 02 B 41012
)	Chapter 7
Debtor)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON CONTESTED PROCEEDING
BASED ON DEBTOR'S MOTION TO AVOID LIEN**

Debtor moved to avoid the lien of Marina Partners on Debtors' home. Following trial, Findings of Fact and Conclusions of Law are now made and entered:

FINDINGS OF FACT

1. On October 18, 2002, the Debtors filed an original petition under Chapter 7 of the United States Bankruptcy Code.
2. The Debtors received their bankruptcy discharges on February 21, 2003.
3. The subject property at 5725 South Fairfield, Chicago, Illinois is owned by Debtors ("property").
4. There are two mortgages on the subject property. Washington Mutual holds a first mortgage on that property in the amount of \$75,796.00. Citifinancial Mortgage holds a second mortgage on the that property in the amount of \$24,489.00.
5. Testimony was offered by Debtors showing that the value of the subject property was \$110,000.00 when this bankruptcy was filed. That was the only evidence of value received, and the value is so found.

6. Marine Partners, the respondent in this case, was scheduled as a creditor in the Debtors' bankruptcy petition and received notice of the bankruptcy filing.

7. Debtors claimed a homestead exemption in the total amount of \$15,000.00 on Schedule C of their petition; that homestead claim was not contested.

8. Marina Partners as assignee of Household Bank obtained a Judgment against one of the joint Debtors dated July 11, 2002. A Memorandum of Judgment was recorded against the Debtors' property on July 23, 2002. The amount of the resulting Judgment lien was \$4,857.31. Including 9% statutory judgment interest thereon until the date of filing of Debtors' petition on October 18, 2002, the total amount due is \$4,930.35.

9. The first mortgage balance as of the date of the filing of Debtors' Chapter 7 petition was \$75,488.38.

10. The second mortgage balance as of the date of the filing of Debtors' Chapter 7 petition was \$24,365.12.

11. The 2002 first installment property tax bill was \$560.41.

12. The 2002 second installment property tax bill was \$572.50.

13. The amount of the unpaid City of Chicago water bill due as of the date of filing is approximately \$252.25.

14. Facts set forth in the Conclusions of Law will stand as additional Findings of Fact.

JURISDICTION

Core jurisdiction of this matter lies under 28 U.S.C. § 1344. It is referred here under Local General Rule 2.33(A) of the United States District Court for this District.

CONCLUSIONS OF LAW

1. The creditor Marina Partners recorded memorandum of judgment which imposed a “judicial lien” as defined in 11 U.S.C. § 101(36).

2. The first mortgage, second mortgage, first and second installments of property tax bills and amount of unpaid water bill due at the time that Debtors Chapter 7 petition was filed each constitute a “lien” as defined in 11 U.S.C. § 101(37).

3. Debtors’ homestead exemption in the amount of \$15,000.00 was validly claimed and allowed under Illinois law without objections when Debtors filed their bankruptcy petition.

4. When calculating the extent of lien impairment and possible lien avoidance under 11 U.S.C. § 522(8)(1) and (2), only prior consensual liens and other non-avoidable senior liens are deducted from property market value prior to the deduction of the judicial lien in issue in applying the avoidance formula. In re Nira and Bhumika Sheth, 225 B.R. 913, 918-919 (Bankr. N.D. Ill. 1998). See also In re Vokac, 273 B.R. 553, 557-558 (Bankr. N.D. Ill. 2003).

5. Under 11 U.S.C. § 522(f)(2)(A), the sum of the judgment lien in issue and all other liens on the property and the exemptions that Debtors could claim if there were no liens on the property is \$4,930.35 (judgment) + \$75,488.38 (1st mortgage) + \$24,365.12 (2nd mortgage) + \$560.41 (r.e. tax) + \$572.50 (r.e. tax) + \$252.25 (water bill) + \$15,000.00 (exemption) = \$121,169.01, including the water bill.

6. Fair market value of the home is the proper standard under § 522(f)(2). Because the total amount of \$121,169.01 in Conclusion No. 5 exceeds \$110,00.00 home value (which was the value of Debtors’ interest in the property in the absence of any liens), the judgment lien “impairs the exemption”

under § 522(f)(2)(A). See e.g. In re Allard, 196 B.R. 402, 410-411 (Bankr. N.D. Ill. 1996). Even if the water bill did not constitute a lien, the total in Conclusion No. 5 would still exceed \$120,800.00.

7. Under 11 U.S.C. § 522(f)(1), the judgment lien impairs the homestead exemption, by the amount of at least \$120,800.00 minus \$110,000.00 equals \$10,800.00. Since the impairment of \$10,800.00 is greater than the judgment lien in the amount of \$4,930.35, the judgment lien is avoided entirely.

CONCLUSION

WHEREFORE, by separate order the lien in issue owned by Marina Partners will by separate order be entirely avoided.

ENTER:

Jack B. Schmetterer
United States Bankruptcy Judge

Dated and entered this 27th day of July 2005.